# In the Supreme Court of the United States

OCTOBER TERM, 1970

---

No. 1737

STEVE P. XYDAS, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

---

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

After a jury trial in the United States District Court for the District of Columbia, petitioner was convicted of interstate transportation of stolen goods (the French Poodle burglary in August 1964) in violation of 18 U.S.C. 2314.[1] He was sentenced to one to three years' imprisonment. The court of appeals affirmed in a comprehensive opinion, Judge Bazelon concurring (Pet. 1a-18a).

[1] He was acquitted by the jury on two other counts involving the Haley housebreaking in May 1964.

The government's evidence is detailed in the opinion below (Pet. 2a-4a). In essence, it showed that sometime after closing on the evening of August 22, 1964, the French Poodle Dress Shop in Washington, D. C., was burglarized by three men (Barnes, Baker and Hamilton) and some ninety-six furs and other articles of women's clothing were stolen. Barnes—a professional burglar who had been a key government witness in numerous burglary cases arising in the District of Columbia (Pet. 3a, n. 4)—testified as a government witness that on the morning prior to the burglary he had telephoned petitioner, advised him of what was planned and that a location was needed to store the furs until he could "get a buyer down from New York, * * *" (Pet. 3a). According to Barnes, petitioner responded that the furs could be stored in the basement of his home in Prince George's County, Maryland (Pet. 3a). Following the theft, the furs were taken to the home of one James Skeens in Landover, Maryland. From there (at about 3:30 a.m. on August 23) they were transported to petitioner's home. Petitioner, however, refused to store them because there were more furs than he had anticipated; at his suggestion they were stored in the garage of his sister's home until they were sold four days later. Barnes testified that he gave petitioner two of the stolen furs in exchange for his participation.

Petitioner's defense at trial was that while he had provided assistance in the storage of furs by suggesting his sister's house, he was not aware of the burglary until the furs were brought to his house and at most could be guilty as an accessory after the fact,

a crime with which he was not charged. He also adduced evidence that he had been an F.B.I. informant in the past. The evidence further showed that petitioner had reported the theft to the F.B.I. in about the middle of September, several weeks after the furs had been sold.

Petitioner raises a variety of complaints—in large measure directed to the government's alleged failure to produce relevant documents for his inspection. These were considered by the court below and found wanting. They provide no occasion for further review by this Court.

1. Petitioner contends (Pet. 5-6) that his case was prejudiced because he was not permitted to inspect the entire F.B.I. file containing all reports of agents concerning their contacts with him since 1959. He urges that this hindered the defense in its efforts to convince the jury to acquit him because he was a confidential informant for the Bureau. As the opinion below shows (Pet. 4a-11a), this defense tactic was not frustrated by the production procedures followed by the trial court.

The defense was provided with all the F.B.I. reports in the file dealing with statements made by the petitioner to agents concerning the offenses on which he was being tried. All the remaining documents in the file were subject to an *in camera* inspection by the trial judge; he concluded that these documents contained nothing of an exculpatory nature, nor anything material or relevant to the charges (Pet. 5a-6a). The court of appeals also "carefully examined" these documents and agreed with the trial court's eval-

uation (Pet. 9a-10a). Additionally, a stipulation was entered into at trial containing, *inter alia*, the dates of all contacts between the petitioner and named F.B.I. agents, the persons who initiated the contacts and a general description of the information furnished by petitioner (see the opinion of the court of appeals at Pet. 6a-8a, n. 7, which sets forth the stipulation in full). As the court below observed, the defense's purpose in obtaining the document was adequately achieved by the actual procedures followed at trial (Pet. 10a-11a); at the same time the government was protected from an unwarranted fishing expedition into confidential criminal intelligence reports. Cf. *Taglianetti* v. *United States*, 394 U.S. 316, 317.[2]

2. It is further contended that petitioner was denied a fair trial because of the joinder of the counts relating to the Haley housebreaking when, in fact, the government knew he was innocent of any connection with that robbery. It is urged that this charge was added as a device to prejudice him on the French Poodle count. This assertion of governmental wrongdoing is not supported by any hard facts. Petitioner relies rather upon an extravagant reading of alleged exculpatory evidence, some of which was not allowed in at trial.[3] The fact of the matter is that Barnes, an

---

[2] The related claim that petitioner was denied access to exculpatory grand jury testimony which would have aided his case on the French Poodle charge (Pet. 10-11) is fully answered by the opinion below, upon which we rely (Pet. 11a-18a).

[3] Barnes did not exonerate petitioner in his out-of-court statements made on other occasions (see Pet. 13-14). Nor,

admitted participant in both robberies, squarely implicated petitioner in the Haley robbery in his trial testimony. Moreover, the trial judge reviewed the grand jury testimony of Barnes, Skeens and others and turned over certain of this testimony to the defense. Indeed, the claim that the Haley charges must have prejudiced petitioner before the jury is belied by the fact that the jury acquitted him of those charges while convicting on the other.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

JUNE 1971.

---

as petitioner argues, did the grand jury testimony of Skeens, another participant in both burglaries, exonerate petitioner. Skeens testified that he thought petitioner had told Barnes that Pat Haley had won a considerable amount of money from him on a numbers bet, but that "[a]s far as him [petitioner] knowing that he set up the job, I don't know that" (Pet. 15).

Similarly the trial judge properly rejected the admission into evidence of a taped telephone conversation between Skeens and petitioner in February 1966. In these recordings, which were played for the defense prior to trial, Xydas denied his participation in the Haley housebreaking. This, however, was the same position he took at trial and the government never alleged that petitioner had ever admitted participation in the Haley robbery.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 426258 724